IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Tr.P(Crl.).No. 82 of 2006()

STC.472/2005 of J.M.F.C.,TALIPARAMBA

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PETITIONER:

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1. GOPALAKRISHNAN,
   SON OF LATE NARAYANAKURUP,
   MANAKKAPARAMBIL HOUSE, AZAD ROAD, KALOOR,
   KOCHI-682 017.

2. K.K.SYAM,
   S/O.T.K.KARUNAKARAN,
   KOOTHAPPILLIL HOUSE, PONNURUNNI, VYTTILA,
   KOCHI- 682 019.

BY ADV. SRI.V.V.SIDHARTHAN

RESPONDENTS:

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1. T.G.GOPINATHAN,
   S/O.GOPALAN, THARAKANARU PARAMBIL,
   ARANGAM DESOM, ALAKODE P.O., KANNUR DISTRICT.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.
BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.K.K.RAJEEV

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 17/01/2007, ALONG WITH TPCR NO. 101 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Tr.P.(Cri) Nos. 82 & 101 OF 2006

Dated this the 17th day of January, 2007

ORDER

The common petitioners in these two transfer petitions are accused in two separate prosecutions – both initiated under Sec.138 of the N.I. Act. Those prosecutions are pending before the Judicial Magistrate of the First Class, Taliparamba, (Tr.P.(Cri) No.82) and the Judicial Magistrate of the First Class-IV, Kochi, (Tr.P.(Cri) No.101/06). The prayer of the petitioners is that these cases may be transferred to the Court of the learned Chief Judicial Magistrate, Ernakulam, where the connected prosecution - C.C.No.22/05 is pending. The cases are so integrally connected and that the disposal by the same judicial mind will advance the interests of justice. This, in short, is contention.

2. What is the connection between these three cases? The learned counsel for the petitioners submit that five cheques were handed over by the petitioners herein to one Ashoknath. From the said Ashoknath the respondents in these petitions/complainants in the prosecutions under

Sec.138 of the N.I. Act had some how come into possession of the cheques. They have forged those cheques in order to justify in staking of false claims against the petitioners. The petitioners had filed a complaint before the learned Magistrate alleging the commission of forgery and connected offences by the said Ashoknath as also the respondents/complainants herein. The said complaint was referred to the police and the police, after completing the investigation, had filed the final report. Cognizance was taken on such final report and C.C.No.22/05 was registered. The police, in the final report, have raised allegations against one Prathapan – respondent/complainant in Tr.P.(Cri) No.101/06 as also T.G.Gopinathan – respondent/ complainant in Tr.P.(Cri) No.82/06.

3. Thus, while allegation in these two prosecutions under Sec.138 of the N.I. Act is that the petitioners have committed the said offence under Sec.138 of the N.I. Act in respect of the two cheques concerned, the final report in C.C.No.22/05 alleges that the very same two cheques along with other cheques were forged by the respondents/complainants herein along with others.

4. Though the respondents/complainants have been served, there is no representation for them when the matter finally came up for hearing. It is submitted that in C.C.No.22/05, though the respondents/complainants herein had claimed discharge, their prayer for discharge has been disallowed and the charges have been directed to be framed. I am, in these circumstances, satisfied that there is real, effective and integral connection between the allegations made in these two prosecutions under Sec.138 of the N.I. Act and the prosecution pending before the learned Chief Judicial Magistrate, Ernakulam, as C.C.No.22/05. The allegations appear to be in the nature of a case and counter case and it would therefore certainly advance the interests of justice if all the three cases were considered and disposed of by the same judicial mind. Of course, separate trials have to be conducted; but they will have to be disposed of together in succession.

5. In the result:

(a) Tr.P.(Cri) No.82/06 is allowed. S.T.C.No.472/05 on the file of the Judicial Magistrate of the First Class, Taliparamba, is transferred to the learned Chief Judicial Magistrate, Ernakulam.

The learned Magistrate, Taliparamba shall forthwith forward the records to the learned Chief Judicial Magistrate, Ernakulam. The parties shall appear before the learned Chief Judicial Magistrate, Ernakulam, without waiting for any further direction on 1/3/2007.

(b) Tr.P.(Cri) No.101/06 is allowed. S.T.No.60/04 pending before Judicial Magistrate of the First Class-IV, Kochi, is transferred to the learned Chief Judicial Magistrate, Ernakulam, where C.C.No.22/05 is pending. The learned Magistrate, Kochi, shall forthwith forward the records to the learned Chief Judicial Magistrate, Ernakulam. The parties shall appear before that court on 1/3/2007.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge